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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 235

LOUIS SOBLE,
Petitioner

v.

STATE OF TEXAS,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

Petitioner was indicted for and convicted of burglary in the Criminal District Court of Dallas County, Texas. During the trial of the case, the State's witness Glenn L. Smith testified that there was certain property belonging to him in the burglarized building at the time of the burglary and that subsequently he found some of that property in petitioner's garage at petitioner's home on Cedar Springs Street in Dallas, Texas. He testified further that a deputy sheriff was with him at the time and that the deputy had a search warrant. (R. 38-

52.) The petitioner objected to this testimony because no search warrant was produced. (R. 24.) Although W. E. Richburg, a justice of the peace, testified that he issued the search warrant (R. 77), and the affidavit for the search warrant was introduced in evidence (R. 79), the search warrant was never produced, the justice of the peace having been unable to locate it.

In affirming the conviction, the Court of Criminal Appeals of Texas said:

> "For the purpose of this discussion, it will be assumed that the search warrant was invalid and the search thereunder was unauthorized, but such, however, by no means shows reversible error, for appellant, testifying as a witness, admitted possession of the property found in his garage.
>
> "The only fact established by the search of appellant's garage was that he possessed the property found therein. This fact of possession, having been admitted by him, rendered his objection to the search untenable. One may not complain of the receipt in evidence of facts which he also puts in evidence. [Citations.]" (R. 192.)

Petitioner assigns as error (1) the action of the trial court "in admitting in evidence all that testimony of the witness Glenn L. Smith with reference to the search of the petitioner's premises and garage at his home, together with the result of said search, because no valid search warrant was produced therefor"; (2) the action of the trial court, "after it was affirmatively shown that the purported search war-

rant, if any, was based upon a defective and insufficient affidavit therefor, in overruling this petitioner's motion to withdraw from the consideration of the jury all that testimony with reference to the search of petitioner's garage and the result of said search"; and (3) the holding of the Court of Criminal Appeals of Texas "that this petitioner, having taken the witness stand and admitted the possession of the property found by reason of the search rendered his objection to said search untenable."[1] Because of such alleged errors, the petitioner asserts that he was deprived of his liberty without due process of law and denied the equal protection of the law in violation of the Fourteenth Amendment.

It is submitted that this case is not a proper one for review by certiorari in this Court. The action of the Texas courts presents no federal question not heretofore determined by this Court against the petitioner. At most, there is presented only an erroneous construction by a state court of a law of the state, the review of which is not within the appellate jurisdiction of this Court.

STATEMENT OF THE CASE

Petitioner's statement of the case[2] is satisfactory.

POINT ONE

In a prosecution in a state court for a state crime the admission of evidence obtained by an unreason-

[1]Petition for Writ of Certiorari and Brief in Support, pp. 19-20.

[2]Brief for the Petitioner, pp. 2-4.

able search and seizure does not violate the Fourteenth Amendment.

Argument and Authorities

Only recently this Court wrote an opinion rejecting a contention essentially the same as that of the petitioner in the present case. In *Wolf v. Colorado*, 69 S. Ct. 1359 (1949), the Supreme Court of Colorado had upheld a conviction based on evidence seized by state officers without a warrant.[3] This Court, in affirming the judgment of the Colorado court, said:

> "The precise question for consideration is this: Does a conviction by a State court for a State offense deny the 'due process of law' required by the Fourteenth Amendment, solely because evidence that was admitted at the trial was obtained under circumstances which would have rendered it inadmissible in a prosecution for violation of a federal law in a court of the United States because there deemed to be an infraction of the Fourth Amendment as applied in *Weeks v. United States*, 232 U.S. 383? . . .
>
> "Unlike the specific requirements and restrictions placed by the Bill of Rights (Amendments I to VIII) upon the administration of criminal justice by federal authority, the Fourteenth Amendment did not subject criminal justice in the States to specific limitations. The notion that the 'due process of law' guaranteed by the Fourteenth Amendment is shorthand for

[3] *Wolf v. People*, 117 Colo. 279, 187 P. (2d) 926 (1947).

the first eight amendments of the Constitution and thereby incorporates them has been rejected by this Court again and again, after impressive consideration. See, *e.g.*, *Hurtado v. California*, 110 U.S. 516; *Twining v. New Jersey*, 211 U.S. 78; *Brown v. Mississippi*, 297 U.S. 278; *Palko v. Connecticut*, 302 U.S. 319. Only the other day the Court reaffirmed this rejection after thorough reexamination of the scope and function of the Due Process Clause of the Fourteenth Amendment. *Adamson v. California*, 332 U.S. 46. The issue is closed.

". . . .

"In *Weeks v. United States*, *supra*, this Court held that in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search and seizure. . . . But the immediate question is whether the basic right to protection against arbitrary intrusion by the police demands the exclusion of logically relevant evidence obtained by an unreasonable search and seizure because, in a federal prosecution for a federal crime, it would be excluded. . . . When we find that in fact most of the English-speaking world does not regard as vital to such protection the exclusion of evidence thus obtained, we must hesitate to treat this remedy as an essential ingredient of the right. . . .

". . . .

"*We hold, therefore, that in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure.*" (Emphasis supplied.)

Petitioner contends that the decision of the Court of Criminal Appeals of Texas "is in direct conflict with the decision of this Court" in *McDonald v. United States*, 335 U.S. 451 (1948).[4] That case was a federal prosecution in a federal court, and the illegal search and seizure was made by federal (District of Columbia) police. Under such circumstances, the Court correctly applied the doctrine of *Weeks v. United States*, 232 U.S. 383 (1914), by holding inadmissible the evidence wrongfully obtained. However, as shown above in the excerpt from *Wolf v. Colorado*, and as recognized in the *Weeks* case itself,[5] the *Weeks* doctrine does not bar the use of evidence obtained and used under the circumstances of the present case.

All of the other decisions of this Court relied upon by the petitioner,[6] except one,[7] were federal prosecutions in federal courts based upon evidence wrongfully seized by federal officers, in which case the *Weeks* doctrine properly applies. Like the *Weeks* case, therefore, under the decision of this Court in *Wolf v. Colorado*, *supra*, they are inapplicable to the present case.

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[4]Petition for Writ of Certiorari and Brief in Support, p. 15.

[5]232 U.S. at 398.

[6]*Johnson v. United States*, 333 U.S. 10 (1948); *Trupiano v. United States*, 334 U.S. 699 (1948); *Go-Bart Importing Co. v. United States*, 282 U.S. 344 (1931); *Agnello v. United States*, 269 U.S. 20 (1925); *Gouled v. United States*, 255 U.S. 298 (1921).

[7]*Malinski v. New York*, 324 U.S. 401 (1945), was a case in which a coerced confession was employed to obtain a conviction. In such cases the Court has consistently applied a rule different from the rule applied in cases like the present one.

POINT TWO

The petition at most presents only an erroneous construction by the state court of state laws, the review of which is not within the power of this Court.

Argument and Authorities

The admission of evidence in question not being prohibited by the Fourteenth Amendment, the only prohibition against its admission is Article 727a of the Texas Code of Criminal Procedure (Vernon 1948), which provides that

> "No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case."

No provision of the Constitution of the United States having been violated by the admission of the evidence in question, the action of the Texas courts at most amounts to no more than an erroneous construction of a state statute not resulting in the denial of any right protected by the Constitution of the United States. That such action is not subject to review by this Court is established beyond question.[5]

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[5] *Twining v. New Jersey*, 211 U.S. 78, 91 (1908); *Iowa Central Ry. v. Iowa*, 160 U.S. 389 (1896); *McNulty v. California*, 149 U.S. 645 (1893); *Neblett v. Carpenter*, 305 U.S. 297, 302 (1938); *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 166 (1917); *Lloyd v. Matthews*, 155 U.S. 222, 227 (1894); *Commercial Bank of Cincinnati v. Buckingham's Executors*, 5 How.

For example, in *Iowa Central Ry. v. Iowa*, 160 U.S. 389 (1896), where the plaintiff in error contended that the action for mandamus could not lawfully be brought until its legal duty to do the thing sought by the action had been previously determined by the verdict of a jury, the Court, in dismissing the writ of error for want of jurisdiction, said:

> "Whether the court of last resort of the State of Iowa properly construed its own constitution and laws . . . was purely the decision of a question of state law, binding upon this court. . . .
>
> "It was not a denial of a right protected by the Constitution of the United States to refuse a jury trial, even though it were clearly erroneous to construe the laws of the State as justifying the refusal. *Brooks v. Missouri*, 124 U.S. 394; *Spies v. Illinois*, 123 U.S. 131, 166." (393-394.)

And in *Twining v. New Jersey*, 211 U.S. 78 (1908), in holding that "the exemption from compulsory self-incrimination in the courts of the States is not secured by any part of the Federal Constitution," the Court said:

> "If the right here asserted is not a Federal right, that is the end of the case. We have no authority to go further and determine whether the state court has erred in the interpretation and enforcement of its own laws." (91.)

317, 342-343 (U.S. 1846); *King v. West Virginia*, 216 U.S. 92, 101 (1910); *Los Angeles Farming & Milling Co. v. Los Angeles*, 217 U.S. 217, 226 (1910); *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 680 (1930).

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court and that the petition for writ of certiorari should be denied.

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